IN THE

SUPREME COURT OF THE UNITED STATES

NO. 77-622

RAYMOND J. ZITKO, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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CITATIONS TO OPINIONS BELOW

The memoranda and opinions of the Federal District Court are unreported and are set out in Appendix A hereto, beginning at page 1e. The opinion of the Court of Appeals for the Sixth Circuit dated July 21, 1977 is unreported and is reprinted in Appendix C hereto beginning at page 27a.

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on July 21, 1977. The jurisdiction of the Court is invoked under 28 USC 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The provisions of the Federal Coal Mine Health and Safety Act of 1969 which are revelant to the issues involved in this case are as follows:

Section 103 (30 U.S.C. §813), entitled "Inspections and Investigations" provides as follows:

Purposes

(a) Authorized representatives of the Secretary shall make frequent inspections and investigations in coal mines each year for the purpose of (1) obtaining, utilizing, and disseminating information relating to health and safety conditions, the causes of accidents and the causes of diseases and physical impairments originating in such mines, (2) gathering information with respect to mandatory health or safety standards, (3) determining whether an imminent danger exists, and (4) determining whether or not there is compliance with the mandatory health or safety standards or with any notice, order, or decision issued under this subchapter. In carrying out the requirements of clauses (3) and (4) of this subsection, no advance notice of an inspection shall be provided to any person. In carrying out the requirements of clauses (3) and (4) of this subsection in each underground coal mine, such representatives shall make inspections of the entire mine at least four times a year.

Right of entry of investigators

(b) (1) For the purpose of making any inspection or investigation under this chapter, the Secretary or any authorized representative of the Secretary shall have a right of entry to, upon, or through any coal mine.

(2) For the purpose of developing improved mandatory health standards, the Secretary of Health, Education, and Welfare or his authorized representative shall have a right of entry to, upon, or through any coal mine.

(3) The provisions of this chapter relating to investigations and records shall be available to the Secretary of Health, Education, and Welfare to enable him to carry out his functions and responsibilities under this chapter.

Utilization of facilities and personnel of other Federal agencies

(c) For the purpose of carrying out his responsibilities under this chapter, including the enforcement thereof, the Secretary may by agreement utilize with or without reimbursement the services, personnel, and facilities of any Federal agency.

Hearings; subpena; fees; contempt

(d) For the purpose of making any investigation of any accident or other occurrence relating to health or safety in a coal mine, the Secretary may, after notice, hold public hearings, and may sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the

United States. In case of contumacy or refusal to obey a subpena served upon any person under this section, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Notice of accident; preservation of evidence; supervision of rescue operations

(e) In the event of any accident occurring in a coal mine, the operator shall notify the Secretary thereof and shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes thereof. In the event of any accident occurring in a coal mine where rescue and recovery work is necessary, the Secretary or an authorized representative of the Secretary shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activity in such mine.

Orders to insure protection of persons and property

(f) In the event of any accident occurring in a coal mine, an authorized representative of the Secretary, when present, may issue such orders as he deems appropriate to insure the safety of any person in the coal mine, and the operator of such mine shall obtain the approval of such representative, in consultation with appropriate State representatives, when feasible, of any plan to recover any person in the mine or to recover the mine or to return affected areas of the mine to normal.

Imminent danger notice; requisites; special inspection

(g) Whenever a representative of the miners has reasonable grounds to believe that a violation of a mandatory health or safety standard exists, or an imminent danger exists, such representative shall have a right to obtain an immediate inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, signed by the representative of the miners, and a copy shall be provided the operator or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual miners referred to therein shall not appear in such copy. Upon receipt of such notification, a special inspection shall be made as soon as possible to determine if such violation or danger exists in accordance with the provisions of this subchapter.

Accompaniment right of representative of miners

(h) At the commencement of any inspection of a coal mine by an authorized representative of the Secretary, the authorized representative of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the authorized representative of the Secretary on such inspection.

Hazardous conditions; spot inspections

(i) Whenever the Secretary finds that a mine liberates excessive quantities of methane or other explosive gases during its operations, or that a methane or other gas ignition or explosion has occurred in such mine which resulted in death or serious injury at any time during the previous five years, or that there exists in such mine other especially hazardous conditions, he shall provide a

minimum of one spot inspection by his authorized representative of all or part of such mine during every five working days at irregular intervals. PUB.L. 91—173, Title I, §103, Dec. 30, 1969, 83 Stat. 749

Section 108 (30 U.S.C. §818), entitled "Injunctions" reads as follows:

CIVIL ACTION FOR RELIEF; JURISDICTION AND VENUE; GROUNDS FOR INVOCATION OF REMEDIES; FORCE AND EFFECT OF ORDERS; REPRESENTATION OF SECRETARY

The Secretary may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which a coal mine is located or in which the operator of such mine has his principal office, whenever such operator or his agent (a) violates or fails or refuses to comply with any order or decision issued under this chapter, or (b) interferes with, hinders, or delays the Secretary or his authorized representative, or the Secretary of Health, Education, and Welfare or his authorized representative, in carrying out the provisions of this chapter, or (c) refuses to admit such representatives to the mine, or (d) refuses to permit the inspection of the mine, or the investigation of an accident or occupational disease occurring in, or connected with, such mine, or (e) refuses to furnish any information or report requested by the Secretary or the Secretary of Health, Education, and Welfare in furtherance of the provisions of this chapter, or (f) refuses to permit access to, and copying of, such records as the Secretary or the Secretary of Health, Education, and Welfare determines necessary in carrying out the provisions of this chapter. Each court shall have jurisdiction to provide such relief as may be appropriate. Temporary restraining orders shall be issued in accordance with Rule 65 of the Federal Rules of Civil Procedure, as amended, except that the time limit in

such orders, when issued without notice, shall be seven days from the date of entry. Except as otherwise provided herein, any relief granted by the court to enforce an order under clause (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this subchapter, unless, prior thereto, the district court granting such relief sets it aside or modifies it. In actions under this section, subject to the direction and control of the Attorney General, as provided in section 507(b) of Title 28, attorneys appointed by the Secretary may appear for and represent him. In any action instituted under this section to enforce an order or decision issued by the Secretary after a public hearing in accordance with section 554 of Title 5, the findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. Pub.L. 91—173, Title I, §108, Dec. 30, 1969, 83 Stat. 756.

Section 109 (30 U.S.C. §819) entitled "Penalties" reads as follows:

(a) (1) The operator of a coal mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of this chapter, except the provisions of subchapter IV of this chapter, shall be assessed a civil penalty by the Secretary under paragraph (3) of this subsection which penalty shall not be more than $10,000 for each such violation. Each occurrence of a violation of a mandatory health and safety standard may constitute a separate offense. In determining the amount of the penalty, the Secretary shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.

(2) Any miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials, matches, or lighters shall be subject to a civil penalty assessed by the Secretary under paragraph (3) of this subsection, which penalty shall not be more than $250 for each occurrence of such violation.

(3) A civil penalty shall be assessed by the Secretary only after the person charged with a violation under this chapter has been given an opportunity for a public hearing and the Secretary has determined, by decision incorporating his findings of fact therein, that a violation did occur, and the amount of the penalty which is warranted, and incorporating, when appropriate, an order therein requiring that the penalty be paid. Where appropriate, the Secretary shall consolidate such hearings with other proceedings under section 815 of this title. Any hearing under this section shall be of record and shall be subject to section 554 of Title 5.

(4) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the Secretary shall file a petition for enforcement of such order in any appropriate district court of the United States. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall forthwith be sent by registered or certified mail to the respondent and to the representative of the miners in the affected mione or the operator, as the case may be, and thereupon the Secretary shall certify and file in such court the record upon which such order sought to be enforced was issued. The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order and decision of the Secretary or it may remand the proceedings to the Secretary for such further action as it may direct. The court shall consider

and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a court of appeals under section 816 of this title, and upon the request of the respondent, such issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings, the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the Attorney General, as provided in section 507(b) of Title 28, attorneys appointed by the Secretary may appear for and represent him in any action to enforce an order assessing civil penalties under this paragraph.

Willful violations or refusal to comply with health and safety standards by operators of mines

(b) Any operator who willfully violates a mandatory health or safety standard, or knowingly violates or fails or refuses to comply with any order issued under section 814 of this title, or any order imcorporated in a final decision issued under this subchapter, except an order incorporated in a decision under subsection (a) of this section or section 820(b) (2) of this title, shall, upon conviction, be punished by a fine of not more than $25,000, or by imprisonment for not more than one year, or by both, except that if the conviction is for a violation committed after the first conviction of such operator under this chapter, punishment shall be by a fine of not more than $50,000, or by imprisonment for not more than five years, or by both.

Willful violations or refusal to comply with health and safety standards by corporate operators of mines

(c) Whenever a coporate operator violates a mandatory health or safety standard or knowingly violates or fails or refuses to comply with any order issued under this chapter or any order incorporated in a final decision issued under this chapter, except an order incorporated in a decision

issued under subsection (a) of this section or section 820 (b) (2) of this title, and any director, officer, or agent of such coporation who knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (b) or this section.

False statements or representations

(d) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter or any order or decision issued under this chapter shall, upon conviction, be punished by a fine of not more than $10,000, or be imprisonment for not more than six months, or by both.

Dstribution or sale of noncomplying components

(e) Whoever knowingly distributes, sells, offers for sale, introduces, or delivers in commerce any equipment for use in a coal mine, including, but not limited to, components and accessories of such equipment, which is represented as complying with the provisions of this chapter, or with any specification or regulation of the Secretary applicable to such equipment, and which does not so comply, shall, upon conviction, be subject to the same fine and imprisonment that may be imposed upon a person under subsection (d) of this section.
Pub.L. 91—173, Title I,§ 109, Dec. 30, 1969, 83 Stat. 756.

QUESTIONS PRESENTED

I. Whether the sufficiency of search warrants to conduct searches and seizures in Coal Mine offices for the purpose of discovering evidence of criminal violations of the

Federal Coal Mine Health and Safety Act of 1969 are to be judged under the traditional probable cause standards set forth by this Court in *Agular v. Texas, 378 US 108 (1964)* and *Spinelli v. United States, 393 Us 410 (1969),* or by the standards established by this Court for administrative searches in *Camara v. Municipal Court, 387 US 523 (1967)* and *See v. City of Seattle, 387 US 541 (1967).*

II. Whether the Federal Coal Mine Health and Safety Act of 1969 which permits a Federal Coal Mine inspector to enter a "coal mine" for the purposes of making inspections and investigations can be jucicially altered to give a Federal Coal Mine inspector the right to obtain an administrative warrant and to search for and seize records and other personal property contained in private coal mine adminstrative offices.

III. Whether the affidavits in this case which were used to support the issuance of search warrants established the requisite probable cause for the issuance of search warrants under the Fourth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

On May 21, 1974, eight search warrents were issued by United States Magistrate Joseph J. Freedman, permitting the government to search eight different premises which were owned and operated by Consolidation Coal Company. On May 22, 1974, the warrants were served at each of the premises and searches were conducted pursuant thereto. Various items were seized from each of the searched primises.

Petitioner, Raymond J. Zitko, was at the time the searches were conducted in the employ of Consolidation Coal Company in the capacity of assistant safety director. As such, he maintianed an office at the Georgetown General Office of Consolidation Coal Company in Harrison County, Ohio. Petitioner was present at his office when the search warrant wad executed therein. Further, as part of his employment responsibilities,

petitioner had collateral or joint responsibility for the respirable dust records of Consolidation Coal Company and regularly visited each of the other offices which were searched prusuant to the search warrants.

In September, 1975, petitioner, Raymond J. Zitko, was charged with seventy-eight counts of a one hundred seventy-two count indictment. The indictment charged that Consolidation Coal Company and eight individuals (including petitioner Zitko) conspired to defraud the government and conspired to violate various provisions of the Federal Coal Mine Health and Safety Act of 1969.

On October 28, 1975, Consolidation Coal Company filed a motion to suppress the evidence seized in the searches of the Consolidation Coal Company offices. Petitioner Zitko also filed a motion to suppress the evidence so seized. The basis of the motion was that the affidavits in support of the warrants were insufficient to establish probable cause for the issuance of the warrants.

All of the warrants but one were based upon the affidavit of William E. Holgate, an employee of the Mining Enforcement and Safety Administration of the Department of the Interior. One warrant was supported by the affidavit of Holgate and by an affidavit of Thomas A. Jeskey, a Federal Coal Mine inspector. (Both affidavits are reproduced in the appendix hereto).

Both affidavits referred to information obtained from an unnamed former employee of Consolidation Coal Company concerning alleged irregularities in the respirable dust sampling program at several mines of Consolidation Coal Company. The affidavits stated that evidence of criminal violations of the Federal Coal Mine Health and Safety Act of 1969 was thought to be concealed in the offices to be searched.

On June 11, 1976, the Federal District Court granted Consolidation Coal Company's motion to suppress the evidence seized from several of the locations on the ground that the affidavits used to obtain the warrants

failed to show probable cause under the test established by this Honorable Court in *Aguilar v. Texas, 378 US 108 (1964)* and *Spinelli v. United States, 393 US 410 (1969). (Appendix at page 1a).*

At that time, the Federal District Court dismissed without prejudice petitioner Zitko's motion to suppress the evidence seized for the reason that the record was insufficient to determine the standing of petitioner Zitko to suppress the evidence.

On August 9, 1976, petitioner Zitko renewed his motion to suppress all the evidence seized in the searches of the offices. In his motion, petitioner Zitko set forth in detail the factual basis supporting his claim of standing as a "person aggrieved" under Federal Criminal Rule of Procedure 41(e).

On October 4, 1976, the Court granted petitioner Zitko's motion to suppress the evidence. At that time, the Court had already denied respondent's motion for reconsideration of the Court's order suppressing the evidence as to Consolidation Coal Company.

Respondent appealed under the provisions of 18 U.S.C. §3731, certifying that the suppressed evidence was "a substantial proof of the charge(s) pending against the defendant(s)."

On July 21, 1977, the Court of Appeals for the Sixth Circuit reversed and remanded, a plurality of the panel holding, *sua sponte*, that the administrative standard of probable cause set forth in *Camara v. Municipal Court, 387 US 523 (1967)* and *See v. City of Seattle, 387 US 541 (1967)* applied in this case and that the affidavits satisfied this test. Judge Engel, concurring in the result, held that the affidavits had met the more rigorous standards of Aguilar and Spinelli, supra, but found that the issues relating to administrative searches and seizures should await resolution until a proper case arises for such a decision.

REASONS FOR GRANTING THE WRIT

1. The decision of the Court of Appeals for the Sixth Circuit expands to an impermissable extent the scope of this Court's decision in *Camara v. Municipal Court, 387 US 523 (1967)* and *See v. City of Seattle, 387 US 541 (1967)* in light of the fact that the search warrants were issued to obtain evidence of criminal activity.

A basic issue presented for review by this case is whether probable cause for the issuance of search warrants should be tested by the traditional constitutional standards established in *Aguilar* and *Spinelli* or by the administrative standards established in *Camara* and *See*.

It was held by this Court in Camara and See that a warrant for routine, visual inspections of buildings to determine compliance with municipal and state regulations could be obtained upon a less rigorous showing of probable cause than that required in criminal cases. This Court based its holding upon the fact that routine regulatory inspections were not "aimed at the discovery of evidence of a crime ...." Camara v. Municipal Court, 387 US 523 at 537 (1967).

The search warrants and affidavits in this case clearly show that the searches and seizures were to be made in an effort to obtain evidence of criminal violations. (Appendix at page 43a-91a). The Sixth Circuit Court of Appeals realized and acknowledged that the searches and seizures were made based upon a suspicion of criminal activity rather than administrative necessity. However, the Court found that the "motivation" for the search was irrelevant and that the regulatory nature of the search was not affected by the suspicion of criminal activity which prompted the same.

The Court of Appeals also reasoned that too great a burden would be placed upon a magistrate to determine whether a search was prompted by administrative necessity or by a suspicion of criminal activity. The Court

therefore held that "all Section 813 Search Warrant Application are subject to a uniform, administrative standard of review, whether or not criminal violations of the act are suspected." (Appendix at page 39a).

Petitioner's contention in this case, that a search warrant must be judged by the standards set forth by this Honorable Court in the cases of *Aguilar* and *Spinelli* even though they were issued under an administrative act is supported by the decision of the Supreme Court of Michigan in the case of *People v. Tyler, 399 Mich. 564, 250 N.W. 2nd 467 (1977* That case involved an administrative fire investigation statute and searches made pursuant thereto with a search warrant. The Court in reliance upon this Court's decision in *Camara v. Municipal Court*, supra held that despite the difficulties inherent in distinguishing between an administrative inspection and a criminal investigation, where evidence is sought for use in a criminal prosecution the traditional standard to determine probable cause for the issuance of a warrant must be used.

The issue to be determined is therefore: when the government seeks an administrative search warrant for the purposes of obtaining evidence of suspected criminal activity, is the standard of probable cause that which was established in the *Aguilar* and *Spinelli* cases or that which was established in the *Camara* and *See* cases?

If certiorari is granted, petitioner will argue that the nature and purpose of the search, which increases the extent of intrusion upon constitutionally protected rights, governs the selection of the standard to measure probable cause for the issuance of a search warrant, notwithstanding the problems such a standard may impose upon the issuing magistrate in some cases.

Petitioner respectfully submits that the right to an administrative search warrant permitted by this Court in *Camara* and *See* is determined not by the administrative character of the statute involved but rather by the nature

and the purpose of the search and the attendant seriousness of the intrusion upon constitutionally protected rights and property under the Fourth Amendment to the United States Constitution.

2. The Court of Appeals for the Sixth Circuit had improperly construed and expanded the provisions of the Coal Mine Health and Safety Act of 1969 to permit a search and seizure of private offices with an Administrative Warrant.

Title 30 U.S.C. §813(a) and (b) gives Federal Mine Inspectors the right to enter into or upon any "coal mine" for purposes of making inspections and investigations. The Coal Mine Health and Safety Act of 1969 expressly authorizes the use of subpoenas, injunctions and fines to obtain entry or documents. 30 U.S.C. §813, et seq. The Sixth Circuit Court of Appeals however chose to interpret the provisions of the Act as evidencing a congressional intent to "permit federal inspectors to enter coal mine offices in the normal course and to independently assess and review (if not cease) pertinent indica of compliance with the Act." (Appendix at page 33a). In addition, the Court went one step further and although nothing that the act did not authorize the "wholesale seizure of records which took place here" (Appendix at page 31a) it implied a right of seizure pursuant to an administrative search warrant.

The Court reasoned that the congressionally approved means for obtaining documents, i.e. subpoenas and injunctions was insufficient to effect the surprise necessary to insure effective enforcement of the Act.

Petitioner respectfully submits and will argue if certiorari is granted that the Sixth Circuit's holding on this ussue was improper and that an administrative search warrant cannot be issued unless there is express statutory authority to accomplish the purposes of the warrant. Petitioner would further argue that absent such express authority a criminal search warrant must be obtained to

effect the type of searches and seizures accomplished by the government in this case.

Petitioner's position is supported by the case of *Midwest Growers Co-op. Corp. v. Kirkemo, 533 F.2d 455 (9th Cir. 1976).* That case involved administrative inspections under the Interstate Commerce Act. The relevant portions of the Act, 49 U.S.C. §320, et. seq. authorized the Interstate Commerce Commission to inspect, examine, copy and have access to any and all accounts, books, records and memoranda. Notwithstanding this statutory grant of authority, the Court held that absent an express provision for the right of entry upon the premises for the documents and other materials, an administrative warrant could not be used to enforce the inspection procedure. The Court held that the agency must utilize investigatory techniques provided by the revelant statute including injunctive relief and the right to bring criminal action for refusal to provide access to revelant records.

It is clear that the Ninth Circuit's decision in *Kirkemo* is in direct conflict with the Sixth Circuit's decision in the present case, the former refusing to imply authority to enter private offices and review documents pursuant to an administrative search warrant, the latter implying the right not only to enter private offices and inspect documents pursuant to an administrative search warrant, but also the right to seize those documents.

It should be noted that Congress, although having the power to provide for the issuance of administrative search warrants as a means of enforcing an agency's investigatory powers withheld that authority in the Coal Mine Health and Safety Act of 1969. The Congress instead chose to provide Federal Coal Mine inspectors with the right to subpoena and to seek injunctive reliev in dealing with uncooperative mine operators; these enforcement procedures being bolstered by penalties. However, Congress has in several acts, including the Comprehensive Drug Abuse

Prevention and Control Act, 21 U.S.C. §880, expressly provided for the issuance of administrative search warrants to enforce the agency's investigatory powers. Absent such a provision in the Coal Mine Health and Safety Act of 1969, petitioner respectfully submits that the only interpretation can be that Congress intended no such authority to be granted to Fededral Coal Mine investigators.

3. The affidavits used by the government to obtain the search warrants in this case fall far below the requisite probable cause standards for the issuance for search warrants.

The Holgate and Jeskey affidavits (Appendix at page 51a-56a). which form the basis upon which probable cause for the issuance of the search warrants was established clearly failed to satisfy the test of probable cause established by this Court is *Aguilar* and *Spinelli*, supra. The affidavits were based in substantial part upon information provided by an unnamed informant and both affidavits failed to show that the informant was trustworthy or that his information was reliable.

The Federal District Court in considering this issue properly held as follows:

> "The crucial part of the affidavits is the relating of the activities of Kull and McNickles at the Georgetown laboratory and, as discussed above, there is simply no indication as to how this information was obtained. Informant did not state he personally observed these activities, and there is no indication that Kull and McNickles personally told the informant about their activities; even assuming that they did, myriad of different problems would arise regarding a the reliability of these individuals." (Appendix at page 21a).

Petitioner respectfully submits that the affidavits clearly fail to establish the requisite cause for the issuance of search warrants under the test set forth by *Aguilar* and *Spinelli,* supra.

In the alternative, if it is determined that the administrative standard of probable cause is applicable to this case, petitioner submits that the affidavits used herein fall short of even that standard of probable cause and that therefore the search warrants were improperly issued.

CONCLUSION

For the foregoing reasons, petitioner respectfully submits that a writ of certiorari should be granted in this cause.

In addition, petitioner respectfully requests that in the event any petition of the co-defendants in this case for certiorari is granted, that this petition also be granted and that the cases be consolidated for oral argument for the reason that they all present substantially the same issued for determination.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Petitioner Raymond Zitko's undersigned counsel hereby certifies that he served a copy of the foregoing *Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit* on the following persons:

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ABRAHAM, PURKEY & LEVY

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